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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

The right to a fair trial: Current recognition and measures
necessary for its strengthening

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Addendum

RIGHT TO AMPARO, HABEAS CORPUS, AND SIMILAR PROCEDURES

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Introduction

1. This part of the report discusses amparo and habeas corpus as an aspect of the right to a fair trial. This part also contains the notes for the entire third report on the right to a fair trial.
2. During the discussion of the first two fair trial reports at the forty-second and forty-third sessions of the Sub-Commission, members suggested that the right to petition for habeas corpus or amparo should be made non-derogable even during periods of emergency. Pursuant to the request of the Sub-Commission contained in its resolution 1991/15, the Commission, in its resolution 1992/35, called on all States "to establish a procedure such as habeas corpus by which anyone who is deprived of his or her liberty by arrest or detention shall be entitled to institute proceedings before a court, in order that that court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is found to be unlawful ... [and] to maintain the right to such a procedure at all times and under all circumstances, including during states of emergency."
3. This addendum to the report summarizes the nature of amparo and habeas corpus, the sources of international amparo/habeas corpus norms, and the issue of derogability. National interpretations of the right of habeas corpus will be considered in the fourth fair trial report to be presented in 1993.

I. AMPARO

4. Amparo is a Latin American writ enabling a claimant to seek protection from any governmental infringement of rights and duties. While amparo can be used to challenge illegal detention (like the habeas corpus writ), it can be used against other illegal conduct as well.
5. Because amparo can be applied to all rights, "it is possible to conclude that amparo comprises a whole series of remedies and that habeas corpus is but one of its components." 652/ In some cases habeas corpus has the function of an independent remedy, while in other circumstances, habeas corpus is seen as either the "amparo of freedom" or as an integral part of amparo. 653/ When habeas corpus functions as an independent remedy, its primary purpose is to protect the personal freedom of detainees or those threatened with detention.
6. The writ of amparo was included in various international human rights instruments beginning with article 18 of the American Declaration of the Rights and Duties of Man in May 1948. 654/ In December 1948, the amparo writ was incorporated into article 8 of the Universal Declaration of Human Rights. 655/ Article 8 of the Universal Declaration of Human Rights was implemented in 1966 through article 2 (3) of the International Covenant on Civil and Political Rights. 656/ In 1969 the amparo writ was incorporated into the American Convention on Human Rights. 657/
7. Although the amparo provisions in the international human rights instruments provide a simple remedy to protect against abusive acts of any authority, the applications of the writ in Latin America vary widely. There are two basic categories of the Latin American amparo. 658/ First, the

majority of Latin American jurisdictions use amparo to safeguard all human rights established in national constitutions, with the exception of personal liberty, which is protected by the habeas corpus writ. 659/ "In Guatemala and, to a great extent, Honduras and Nicaragua, the amparo also may be employed to challenge the constitutionality of laws, but the effect of a declaration of unconstitutionality is limited to the litigants in that particular case." 660/

8. The Mexican writ of amparo covers five distinct functions, which extend to the whole constitutional, statutory and administrative legal order. 661/ The five functions include: (1) the "liberty amparo (amparo de la libertad) which protects life and personal liberty in the manner of habeas corpus; (2) the "amparo against the laws" (amparo contra leyes) which challenges unconstitutional laws; (3) the "amparo-cassation" (amparo-casación) which reviews judicial decisions of any level; (4) the "administrative amparo (amparo administrativo) which checks the conduct of administrative authorities; and (5) the "agrarian amparo" (amparo en materia agraria, ejidal y comunal) which protects the rights of farmers subject to the administration of agrarian reform laws. 662/

9. The Mexican writ of amparo has influenced, directly or indirectly, the development of the writ in other Latin American nations including Argentina, Bolivia, Chile, Costa Rica, Ecuador (at least until 1971), El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay and Venezuela. The Brazilian mandado de segurança (writ of security) also bears the distinct imprint of the Mexican writ. 663/

II. HABEAS CORPUS

10. Habeas corpus the "Great Writ," is a remedy often described as "the bulwark of individual freedom" 664/ because it allows detainees to pursue a prompt judicial challenge of the lawfulness of their detention. Habeas corpus is a key to the protection of all other human liberties. 665/ The habeas corpus right protects detainees in two ways. First, the personal freedom of the detainee is protected through having the legality of the detention determined. Second, the life and physical integrity of the detainee is protected through the procedure of being brought before a judge.

11. The right of judicial review of detention can be traced as far back as Roman times and can be seen in different forms throughout history. Today, many constitutions throughout the world provide for a habeas corpus right, 666/ while some of the main international instruments on human rights also contain equivalents to habeas corpus. 667/ In some countries, however, the right to habeas corpus has been suspended under states of emergency or is rendered ineffective de facto leaving detainees susceptible to violations of other fundamental human rights. 668/ The Inter-American Commission of Human Rights stated that "it is precisely in these special circumstances [states of emergency] that the writ of habeas corpus acquires its greatest importance." 669/

III. SOURCES OF INTERNATIONAL AMPARO/HABEAS CORPUS NORMS

A. International instruments with amparo/habeas corpus provisions

12. Article 9 (4) of the International Covenant on Civil and Political Rights provides:

"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

13. Article 9 (4) is considered a habeas corpus provision even though the words "in the nature of habeas corpus" from earlier drafts of the Covenant were deleted to allow States the freedom to fashion remedies through their own legal systems.

14. A provision similar to article 9 (4) of the International Covenant on Civil and Political Rights may be found in the European Convention, article 5 (4):

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

15. The equivalent of amparo/habeas corpus are also found in the American Convention on Human Rights. Article 7 (5) provides:

"Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial."

Article 7 (6):

"Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty has the right of recourse to a competent tribunal in order that it may decide on the legality of such threat, this remedy may not be restricted or abolished. The interested party, or another person on his behalf, is entitled to seek these remedies."

16. Unique to the Inter-American system is the provision of amparo, which incorporates the habeas corpus right in some cases. Article 25 of the American Convention sets forth the procedural institution of amparo, which is a simple, prompt remedy for protecting all constitutional rights and laws recognized by the State parties and by the Convention.

17. Article XXV of the American Declaration of the Rights and Duties of Man provides:

"...

"Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released ..."

18. An effective remedy in the nature of habeas corpus can also be inferred from the African Charter on Human and Peoples' Rights, article 6: "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained." Similarly, article 7 (1) (a) can be read to provide relief against violations of fundamental rights, such as liberty: "Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force."

B. Interpretations of the right to habeas corpus in the criminal context

19. Most interpretations of habeas corpus have occurred in the European system and revolve around the meaning of article 5 (4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Interpretations have centred on what type of body may be considered a "court" for purposes of satisfying article 5 (4) and how "speedily" a court must determine the lawfulness of detention.

1. What qualifies as a "court"

20. In 1971 the European Court of Human Rights addressed the nature of the "court" to which access must be given in the "Vagrancy Cases." 670/

"[I]n order to constitute such a 'court' an authority must provide the fundamental guarantees of procedure applied in matters of deprivation of liberty. If the procedure of the competent authority does not provide them, the State could not be dispensed from making available to the person concerned a second authority which does provide all the guarantees of judicial procedure.

In sum, the Court considers that the intervention of one organ satisfies Article 5 (4), but on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question ..."

21. The Court held that the administrative procedure under Belgian law whereby a magistrate makes decisions to detain vagrants could not be considered a "court" within the meaning of article 5 (4) of the European Convention. While allowing for a hearing and a public decision, the procedure was not sufficient, considering that a long deprivation of liberty (from 7 to 21 months) was at stake along with various shameful consequences. 671/

22. There is a need to control the "lawfulness of the detention." A court must have jurisdiction to control all aspects of the decision to detain whether relating to fact or law. Power to release the detainee is needed if an unlawful detention exists. The Belgian Conseil d'Etat did not satisfy the requirements of article 5 (4). 672/ Hence, advisory bodies such as mental health review tribunals or parole boards are not a "court" under article 5 (4). 673/ Article 5 (4) of the European Convention means only that the authority must possess a judicial character (independent of the executive and the parties).

23. According to the Engel case, 674/ military tribunals, even with military personnel, may be sufficiently independent to be considered a "court". 675/

24. While military tribunals may be a "court" under the European Convention, the Human Rights Committee has a more restricted view of military proceedings. The Committee held that an authority is not a "court" simply because it views detention according to established legal procedures. The court must be a court of law. The Committee found that a military disciplinary proceeding and a military appeal process did not equal a "court" for purposes of article 9 (4) of the International Covenant on Civil and Political Rights. 676/ In the same case, the Committee held that a supervisory military officer is not a "court" under article 9 (4). 677/ In another case, the Committee found that a Minister of Interior could not review the detention with the necessary objectivity. 678/

25. While Article 5 (4) of the European Convention does not give the same procedural rights as article 6 (1), 679/ the article does require that procedures for challenging detention be taken before a court, that the remedies be determined speedily 680/ and that the procedural guarantees be adequate in the circumstances.

2. The meaning of "speedily"

26. Remedies must be determined speedily 681/ or "without delay". 682/ The view of the European Commission on Human Rights has evolved into finding, in general, that delays of several months violate article 5 (4) of the European Convention.

27. In 1971, the European Commission of Human Rights found that a hearing within three months of arrest was sufficient under article 5 (4) for the requirement of speedy determination. 683/ More recent cases have found violations for delays of several months. Sanchez Reisse v. Switsererland 684/ found that two separate periods of 31 days and 46 days violated article 5 (4). Zamir v. United Kingdom 685/ held that a 4 1/2-month delay was a violation of article 5 (4). Luberti v. Italy 686/ found an 18-month delay too long. Van Droogenbroeck v. Belgium 687/ held that a 6-month delay violated article 5 (4).

28. In the context of military discipline, the European Commission of Human Rights is more strict with its time limitations. The Commission found a one-month delay in the determination of the legality of detention to violate

article 5 (4). 688/ In Christinet v. Switzerland the European Commission found that final decisions after 10 and 16 days where the applicant was already detained for many years were consistent with article 5 (4). 689/

29. Because the habeas corpus remedy needs to be determined speedily under article 5 (4), "[f]ull written proceedings or an oral hearing of the parties in the examination of such remedies would be a source of delay which it is important to avoid in this field". 690/

30. The Human Rights Committee is quite strict on the issue of delay in habeas corpus proceedings. The Committee held that a seven-day detention with no opportunity to challenge detention before a court violated article 9 (4) of the International Covenant on Civil and Political Rights. The Committee found, however, that it is not useful to set precise deadlines for issuing judgements. Timeliness should be judged on a case-by-case basis. 691/

C. Interpretations outside the criminal context

31. The right to challenge detention applies to all forms of detention. For example, the European Court and Commission of Human Rights have applied article 5 (4) of the European Convention to detainees of unsound mind, members of the armed forces and vagrants. A 10-month detention of an "undesirable alien" pending deportation, however, was held not to violate article 5 (4). 692/ Article 9 (4) of the Covenant on Civil and Political Rights protects individuals detained in non-criminal cases. 693/

1. Mental illness

32. "[P]ersons detained as mentally ill have the right to challenge the lawfulness of their detention before a court, initially and at regular intervals thereafter." 694/ The European Court of Human Rights stated:

"[T]he reasons initially warranting confinement of this kind [i.e. on grounds of mental disorder] may cease to exist. Consequently, it would be contrary to the object and purpose of article 5 to interpret paragraph 4 thereof, read in its context, as making this category of confinement immune from subsequent review of lawfulness merely provided that the initial decision issued from a court. The very nature of the deprivation of liberty under consideration would appear to require a review of lawfulness to be available at reasonable intervals." 695/

33. While the Court stated that article 5 (4) did not necessitate the same "fair trial" guarantees as article 6 (1), it was essential for the detainee to have

"access to a court and the opportunity to be heard in person or, where necessary, through some form of representation, failing which he will not have been afforded 'the fundamental guarantees of procedure applied in matters of deprivation of liberty.' Mental illness may entail restricting or modifying the manner of exercise of such a right, but it cannot justify impairing the very essence of the right. Indeed, special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves ..."

"As to the particular facts, the applicant was never associated, either personally or through a representative, in the proceedings leading to the various detention orders made against him: he was never notified of the proceedings or of the outcome; neither was he heard by the courts or given the opportunity to argue his case."

"In this fundamental respect, the guarantees demanded by article 5 (4) of the Convention were lacking both in law and in practice ..." 696/

A mentally ill detainee, however, cannot claim a violation of article 5 (4) if information in his file is withheld from him (provided the file is made available to the detainee's lawyer). 697/

34. Like its decision in the Winterwerp case, the European Court of Human Rights clarified in X. v. United Kingdom 698/ that a mentally ill detainee had the right to automatic periodic review of the detention or to initiate proceedings challenging the detention at reasonable intervals. 699/ Furthermore, the Court held that article 5 (4) required an appropriate procedure allowing a court to examine whether the patient's disorder still persisted and whether the Home Secretary was entitled to think that a continuation of the compulsory confinement was necessary in the interests of public safety.

35. Similarly, article 5 (4) of the European Convention was violated with respect to the continued detention of a mental patient. The court held that there had not been at the relevant time adequate proceedings whereby the lawfulness of detention could be decided speedily by a court as required. 700/

2. Armed forces

36. The European Court of Human Rights has observed that the European Convention applies in principle to members of the armed forces and not only to civilians. 701/ It is necessary, however, when interpreting and applying the Convention to take into account particular characteristics of military life. 702/ Three criteria are used when deciding cases involving military discipline: the domestic designation of the offence as disciplinary or criminal, the inherent nature of the offence and the severity of the penalty. 703/

3. Vagrancy

37. The European Convention's guarantees also apply to vagrants. The procedure for ascertaining whether or not a person is a vagrant, thus possibly subjecting the person to detention in a vagrancy centre, must consist of the guarantees provided for in article 5 (4) of the European Convention. 704/

IV. DEROGABILITY

38. The right of habeas corpus is not specifically included among those rights from which no derogation is possible under the International Covenant on Civil and Political Rights, article 4, and the European Convention, article 15. 705/

39. The Inter-America Court of Human Rights decided in 1987 that habeas corpus should be non-derogable. Article 27 of the American Convention on Human Rights permits a State party to derogate from its obligations "in time of war, public danger, or other emergency that threatens the security" of the State party, but only "to the extent and for the period of time strictly required ... provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination ...". Article 27 explicitly prohibits a State party from suspending 11 articles of the Convention, as well as "the judicial guarantees essential for the protection of such rights."

40. Two Advisory Opinions issued by the Inter-American Court of Human Rights held that habeas corpus and amparo - the legal remedies guaranteed in articles 7 (6) and 25 (1) - may not be suspended, even in emergency situations, because they are among the "judicial guarantees essential" to protect the rights whose suspension article 27 (2) prohibits. 706/ In the first Opinion, the Court pointed out that habeas corpus performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret, and in protecting against torture or other cruel, inhuman or degrading punishment or treatment. 707/ The Court buttressed this conclusion by reference to bitter realities in recent decades, particularly disappearances, torture and murder committed or tolerated by some Governments. 708/ Such experience has demonstrated that the right to life and to humane treatment are threatened whenever the right to habeas corpus is partially or wholly suspended. 709/

41. In finding that habeas corpus is an essential judicial guarantee of the non-derogable rights enumerated in article 27, and therefore is itself non-derogable, the Court cited the special role that habeas corpus plays in any system governed by the rule of law. The "suspension of guarantees" under article 27 does not imply a temporary suspension of the rule of law. 710/ Even in a state of emergency, when guarantees are suspended, a Government does not acquire absolute powers that go beyond the circumstances justifying the state of emergency.

42. The Court also linked habeas corpus to the "effective exercise of representative democracy" referred to in article 3 of the OAS Charter. 711/ Any suspension of guarantees under article 27 lacks all legitimacy whenever it is resorted to for the purpose of undermining the democratic system. 712/ In the context of a democratic system, habeas corpus is essential to protect the non-derogable rights and freedoms listed in article 27 and therefore may not be suspended.

43. There exists, however, a question about the Court's reasoning. Neither article 25 (1) nor article 7 (6) of the American Convention requires that detainees be brought into the presence of a judge. Therefore, it is unclear how a judge can determine whether the detainee has been ill-treated or killed. 713/

44. In its second Advisory Opinion, the Inter-American Court stated that the "essential" judicial guarantees that are not subject to derogation according to article 27 include habeas corpus, amparo and any other effective remedy before judges or competent tribunals which is designed to guarantee respect

for the rights and freedoms whose suspension is not authorized by the Convention. The Court also stated that the judicial guarantees should be exercised within the framework and the principles of due process of law expressed in article 8. 714/ Furthermore, the Court emphasized that the judicial nature of the guarantees implies "the active involvement of an independent and impartial judicial body having the power to pass on the lawfulness of measures adopted in a state of emergency". 715/

45. Other developments promoting the non-derogability of habeas corpus include the guidelines for the development of model legislation to be applied in emergency situations presented in a report by the Sub-Commission's Special Rapporteur on states of emergency. 716/ These guidelines stated that "No person deprived of liberty ... shall be denied ... the right to challenge the legality of the deprivation of liberty before a court of law by habeas corpus or other prompt and effective remedy." 717/ The Special Rapporteur considered the opinion of the Inter-American Court to be of "universal relevance", 718/ stating "if the derogation from a given right would cause violations of another right which is non-derogable, derogation of the former cannot be permitted, regardless of whether or not it appears in the list of non-derogable rights". 719/ The Special Rapporteur concluded that habeas corpus should be non-derogable under the International Covenant on Civil and Political Rights even though it is not included in the list of non-derogable rights of article 4 (2). 720/

46. The Working Group on Enforced or Involuntary Disappearances has noted that habeas corpus is "potentially one of the most powerful legal tools for unearthing the fate or whereabouts of a disappeared person. The most sophisticated rules governing this institution, however, are rendered inoperative in a situation where cooperation stops at the barracks gate". 721/

47. The Human Rights Committee disfavours any suspension of the right to habeas corpus even though the International Covenant on Civil and Political rights does not expressly make habeas corpus non-derogable. The Human Rights Committee found a violation of article 9 (4) of the International Covenant on Civil and Political Rights because a detainee had no recourse to habeas corpus. 722/ The Human Rights Committee stated that because habeas corpus was denied to persons arrested and detained in Uruguay under "prompt security measures" since they were thought to be "a grave and imminent danger to security and public order", article 9 (4) of the International Covenant on Civil and Political Rights was violated. 723/ The Inter-American Court has stated:

"[I]t should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy which proves illusory because of the general conditions prevailing in the country ... cannot be considered effective. That could be the case ... when the Judicial Power lacks the necessary independence to render impartial decisions or the means to carry out its judgment ...". 724/

48. Similarly, the International Commission of Jurists in its 1983 study recommended:

"The civilian judiciary should retain jurisdiction during a state of emergency to review individual cases of detention at least (i) to ensure that the stated grounds for detention are valid and sufficient (ii) to ensure that proper procedures have been complied with and (iii) to ensure that the conditions of detention are lawful." 725/

49. The International Commission of Jurists and the Federation Internationale des Droits de l'Homme have proposed to the Working Group on Detention of the Sub-Commission that it recommend to the Sub-Commission and the Commission on Human Rights that they call on States "to maintain, at all times and under all circumstances, the right to habeas corpus as set forth in article 9 (4) of the International Covenant on Civil and Political Rights". 726/

50. Other experts have come to similar conclusions about the judiciary during states of emergency. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights adopted by an international panel of experts convened by the International Commission of Jurists in 1984 concluded that "[t]he ordinary courts shall maintain their jurisdiction, even in a time of public emergency, to adjudicate any complaint that a non-derogable right has been violated". 727/

51. The Inter-American Commission has held that the habeas corpus remedy must be effective - "that is, capable of producing the results for which it was designed". 728/ In a Honduran case, three writs of habeas corpus brought on behalf of a "disappeared" Honduran student were not determined by the courts. The Honduran Government asserted that there was a failure to exhaust domestic legal remedies. The Commission, however, stated that the objection of failure to exhaust domestic legal remedies presupposes the existence of an effective remedy. Testimony showed that habeas corpus remedies in Honduras were ineffective or were mere formalities in the period in which the events took place in obtaining the liberty of victims of enforced or involuntary disappearances ordered or tolerated by the Government. To say that a person has not exhausted all domestic remedies, the remedies must be effective. Hence, government compliance is needed. 729/

52. The Human Rights Committee found violations of article 9 (4) of the International Covenant on Civil and Political Rights because two Uruguayan nationals were denied any effective remedy to challenge their arrests and detentions. Uruguay was under obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and to provide effective remedies to the victims. 730/

53. The draft declaration on the protection of all persons from enforced or involuntary disappearances provides for the use of habeas corpus to determine the legality of arrests and the detainee's condition. Article 9 (1) of the draft declaration provides:

"Each State shall ensure under all circumstances, including those mentioned in article 7, the right to an effective judicial remedy, including habeas corpus, as a means of determining the whereabouts or the state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty."

Article 9 (2) of the draft declaration provides:

"In such proceedings, competent authorities, national or international, shall have access to all places holding persons deprived of their liberty and to each part thereof, as well as to any place in which there are grounds to believe that such persons may be found."

54. Although habeas corpus and related procedures for challenging detention were not expressly made non-derogable under the three main multilateral treaties which recognize the right, habeas corpus should now be seen as non-derogable. If habeas corpus is going to be an effective remedy to protect other non-derogable rights, not only should habeas corpus itself be non-derogable under all situations, but it should be in practice an efficacious means at all times to challenge the legality of detention.

Notes for the third report

1/ [European] Convention for the Protection of Human Rights and Fundamental Freedoms, 4 Nov. 1950, 213 U.N.T.S. 222, entered into force 3 Sept. 1953 [hereinafter "the European Convention"].

2/ X. v. United Kingdom, 21 Dec. and Rep. 168, 170 (8 Oct. 1980).

3/ König case, 27 Series A (28 June 1978).

4/ Kaplan v. United Kingdom, 21 Dec. and Rep. 5, 30 para. 154 (17 July 1980).

5/ Ringeisen case, 13 Series A (16 July 1971); König case, supra, at 30, para. 90.

6/ König case, supra, at 30, para. 90.

7/ Ringeisen case, supra, para. 94.

8/ Kaplan v. United Kingdom, supra, at 29, para. 152.

9/ Id.

10/ König case, supra, at 30, para. 90.

11/ Kaplan v. United Kingdom, supra, at 31, para. 157.

12/ Id. at 33, para. 163.

- 13/ X. v. Belgium, 24 Dec. and Rep. 198 (10 March 1981)
- 14/ Zand v. Austria, 15 Dec. and Rep. 70 (12 Oct. 1978).
- 15/ Golder case, 18 Series A (21 Feb. 1975).
- 16/ Isop v. Austria, 5 Y.B. 108 (8 Mar. 1962).
- 17/ Winterwerp case, 33 Series A 23 (24 Oct. 1979).
- 18/ Kaplan v. United Kingdom, supra: see also Albert and Le Compte v. Belgium, 58 Series A (10 Feb. 1983).
- 19/ Van Marle and others v. the Netherlands, 21 Dec. and Rep. 180 (13 Oct. 1980).
- 20/ X. v. Switzerland, 13 Dec. and Rep. 81 (9 May 1978).
- 21/ Sporrang Lönnroth case, 52 Series A (23 Sept. 1982).
- 22/ Appl. No. 8223/78, 2 Digest of Strasbourg Case Law 49, 94 (July 1979) (unpublished).
- 23/ Bock case, 150 Series A (29 Mar. 1989); H. v. United Kingdom, 120 Series A (8 July 1987); X. v. Sweden, 2 Y.B. 354 (30 June 1959).
- 24/ Feldbrugge case, 99 Series A (29 May 1986).
- 25/ Case of Ettli and others, 117 Series A (23 Apr. 1987); Erkner and Hofbauer case, 117 Series A (23 Apr. 1987); Poiss case, 117 Series A (23 Apr. 1987).
- 26/ Zimmermann and Steiner case, 66 Series A (13 July 1983); Lithgow case, 102 Series A (8 July 1986); Adler v. Switzerland, 32 Dec. and Rep. 228 (3 Mar. 1983).
- 27/ Axen case, 72 Series A (8 Dec. 1983).
- 28/ X. v. Belgium, 24 Dec. and Rep. 198, 202 (10 Mar. 1981).
- 29/ Zand v. Austria, supra, at 76.
- 30/ Buchholz case, 42 Series A 15, para. 46 (6 May 1981).
- 31/ Golder case, supra, at 13, para. 27.
- 32/ Id. at 10, para. 21.
- 33/ Isop case, supra, at 122.
- 34/ Winterwerp case, supra.

- 35/ Kaplan v. United Kingdom, supra, at 25, para. 138.
- 36/ X. v. Switzerland, 13 Dec. and Rep. 81, 82 (9 May 1978).
- 37/ Bock case, supra.
- 38/ X. v. Sweden, 2 Y.B. 354 (30 June 1959).
- 39/ H. v. United Kingdom, 120 Series A (8 July 1987).
- 40/ Feldbrugge case, supra.
- 41/ Case of Ettli and others, supra; Erkner and Hofauer case, supra, Poiss case, supra.
- 42/ Zimmermann and Steiner case, supra, at 10, para. 22.
- 43/ Lithgow case, supra, at 70, para. 192.
- 44/ Adler v. Switzerland, supra, at 229.
- 45/ Axen case, supra.
- 46/ The list is not exhaustive and does not represent all the case law where the European Court and Commission have found that a dispute does not involve "civil rights and obligations".
- 47/ X. v. Austria, 43 Coll. Dec. 69 (5 Oct. 1972).
- 48/ X. v. United Kingdom, 9 Dec. and Rep. 224 (19 May 1977); X. v. Sweden, 2 Y.B. 354, 372 (30 June 1959).
- 49/ Neumeister v. Austria, 6 Series B 22 (27 May 1966).
- 50/ X. v. Federal Republic of Germany, 43 Coll. Dec. 28 (5 Oct. 1972).
- 51/ Twenty-One Detained Persons v. Federal Republic of Germany, 27 Coll. Dec. 97 (6 Apr. 1978).
- 52/ X. v. Austria, 8 Coll. Dec. 9 (19 Sept. 1961).
- 53/ X. v. Belgium, 8 Y.B. 282 (1 Oct. 1985).
- 54/ X. v. Austria, 21 Dec. and Rep. 246 (13 Mar. 1980).
- 55/ X. v. Denmark, 5 Dec. and Rep. 157 (8 Mar. 1976).
- 56/ X. v. Switzerland, 20 Dec. and Rep. 161 (9 July 1980).
- 57/ Church of X v. United Kingdom, 12 Y.B. 306 (17 Dec. 1978).

58/ Appl. No. 7706, 2 Digest of Strasbourg Case Law 79 (5 Oct. 1977) (unpublished).

59/ S. v. Federal Republic of Germany, 39 Dec. and Rep. 237 (5 July 1984); X. v. United Kingdom, 21 Dec. and Rep. 168 (8 Oct. 1980).

60/ X. v. Austria, 43 Coll. Dec. 69, 70 (5 Oct. 1972).

61/ Uppal et al. v. United Kingdom, 17 Dec. and Rep. 149 (2 May 1979); Agee v. United Kingdom, 7 Dec. and Rep. 164 (17 Dec. 1976).

62/ Neumeister case, supra, at 83.

63/ X. v. Federal Republic of Germany, 43 Coll. Dec. 28, 34, para. 2 (5 Oct. 1972).

64/ Twenty-One Detained Persons v. Federal Republic of Germany, supra, at 116.

65/ X. v. Austria, 8 Coll. Dec. 9, 10-11 (19 Sept. 1961).

66/ X. v. Belgium, 8 Y.B. 282, 312 (1 Oct. 1985).

67/ X. v. Austria, 21 Dec. and Rep. 246, 247 (13 Mar. 1980).

68/ X. v. Denmark, 5 Dec. and Rep. 157, 158-159 (8 Mar. 1976).

69/ See also König case, 25 Series B 42 (14 Dec. 1976); X. v. United Kingdom, 21 Dec. and Rep. 169 (8 Oct. 1980); X. v. Italy, 21 Dec. and Rep. 208 (10 Oct. 1980).

70/ X. v. Switzerland, 20 Dec. and Rep. 161, 162 (9 July 1980).

71/ Church of X case, 12 Y.B. 306, 316 (17 Dec. 1978).

72/ Eckle case, 51 Series A (15 July 1982).

73/ Engel and others v. the Netherlands, 22 Series A 83-84 (8 June 1986) [hereinafter the Engle case].

74/ X. v. Federal Republic of Germany, 6 Coll. Dec. 29 (26 May 1961).

75/ Engel case, supra.

76/ Engel case, supra; Weber case, 177 Series A (22 May 1990).

77/ Id. at 34, para. 81.

78/ Engel case, supra.

- 79/ Campbell and Fell case, 80 Series A (28 June 1984).
- 80/ Campbell and Fell case, supra, at 35, para. 68.
- 81/ Id. at 36, para. 71.
- 82/ Oztürk case, 73 Series A (2 Feb. 1984).
- 83/ E.g., Albert and Le Compte v Belgium, supra.
- 84/ X. v. Belgium, 20 Dec. and Rep. 40 (5 May 1980).
- 85/ X. v. Federal Republic of Germany, 39 Dec. and Rep. 237 (5 July 1984); X. v. United Kingdom, 21 Dec. and Rep. 168 (8 Oct. 1980); X. v. Italy, 21 Dec. and Rep. 246 (12 Mar. 1980).
- 86/ Engel case, supra.
- 87/ X. v. Austria, 43 Coll. Dec. 69 (5 Oct. 1972).
- 88/ Neumeister case, 14 Coll. Dec. 38 (6 July 1964).
- 89/ Id.
- 90/ Freda v. Italy, 21 Dec. and Rep. 250 (7 Oct. 1980).
- 91/ Id. at 257, para. 5.
- 92/ Kamma v. the Netherlands, 15 Y.B. 398 (30 May 1972).
- 93/ X. v. Belgium, 9 Dec. and Rep. 169, 173 (9 May 1977); Ofner v. Austria, 3 Y.B. 322, 344 (19 Dec. 1960).
- 94/ Ofner v. Austria, 3 Y.B. 322, 344 (19 Dec. 1960).
- 95/ X. v. Belgium 5 Y.B. 168 (12 Mar. 1962).
- 96/ Nielsen case, 4 Y.B. 490 (15 Mar. 1961).
- 97/ Nielsen case, supra, at 536-37.
- 98/ X. v. Austria, 2 Dec. and Rep. 68 (1973).
- 99/ Id.
- 100/ Kamasinski case, 168 Series A (19 Dec. 1989).
- 101/ Brozicek case, 167 Series A (19 Dec. 1989).
- 102/ X. v. the Netherlands, 5 Y.B. 262, 268-270 (23 Nov. 1962).

- 103/ König case, supra.
- 104/ Moreira de Azevedo case, 189 Series A 19, para. 74 (23 Oct. 1990).
- 105/ Wemhoff case, 6 Series A 26, para. 18 (27 June 1968); Stögmüller case, 9 Series A 44, para. 5 (10 Nov. 1969).
- 106/ Obermeier v. Austria, 179 Series A (28 June 1990).
- 107/ Köplinger v. Austria, 12 Y.B. 484.
- 108/ Wemhoff case, supra, at 26; see also Stögmüller case, supra.
- 109/ Brogan case, 145 Series A, 32, para. 59 (29 Nov. 1988).
- 110/ Id. at 32, para. 58.
- 111/ Id. at 33, para. 61.
- 112/ Id. at 33, para. 62.
- 113/ Matznetter case, 10 Series A 34-35 (10 Nov. 1969); Vallon case, 95 Series A 19 (3 June 1985).
- 114/ Neumeister case, 7 Series A 41 (27 June 1968); Deweer case, 35 Series A 22 (27 Feb. 1980).
- 115/ Neumeister case, 6 Series B 81; X. v. the Netherlands, 27 Dec. and Rep. 233, 237 (11 Dec. 1981).
- 116/ Neumeister case, supra, (6 Series B).
- 117/ Deweer case, supra, at 24.
- 118/ Eckle case, 51 Series A 33 (15 July 1982).
- 119/ Ringeisen case, supra, at 45.
- 120/ Eckle case, supra.
- 121/ Wemhoff case, supra, at 26, para. 18.
- 122/ Vallon case, supra, at 22-23.
- 123/ Neubeck v. Federal Republic of Germany, 41 Dec. and Rep. 13, 34 (12 Dec. 1983); H. v. Federal Republic of Germany, 41 Dec. and Rep. 252, 254 (13 Dec. 1984).
- 124/ Erkner and Hofauer case, 117 Series A (23 April 1987).

125/ In the Martins Moreira case, the European Court held the starting point for determination of "reasonable time" to be the day the Portuguese declaration accepting the right of individual petition took effect. (143 Series A 16, para. 43 (26 Oct. 1988).) See also Golder case, in which the European Court found that it is conceivable that "reasonable time" may begin to run even before the issue of a writ commencing proceedings before a court, under certain circumstances. Golder case, supra, at 15, para. 32.

126/ Guincho case, 81 Series A 31, para. 29 (10 July 1984).

127/ Lithgow case, 102 Series A 72, 120 (8 July 1986).

128/ Dec. Adm. Com. Appl. 3168/67 (5 Apr. 1968) (unpublished); see also Zimmermann and Steiner case, 66 Series A 24 (13 July 1983).

129/ Deumeland case, 100 Series A 29-30, para. 90 (29 May 1986).

130/ Neumeister case, supra.

131/ Bock case, 150 Series A (29 Mar. 1983).

132/ Neumeister case, supra; see also Union Alimentaria Sanders SA case, 157 Series A (7 July 1989).

133/ Buchholz case, 42 Series A (6 May 1981).

134/ Milasi v. Italy, 119 Series A (25 June 1987).

135/ Erkner and Hofauer case, 117 Series A (23 Apr. 1987).

136/ Id. at 62, para. 67.

137/ Id. at 63, para. 69.

138/ See also Poiss case, 117 Series A (23 Apr. 1987).

139/ Union Alimentaria Sanders SA Case, supra, at 13, para. 35.

140/ Buchholz case, supra.

141/ Lechner and Hess case, 118 Series A 19 (23 Apr. 1987).

142/ Moreira de Azevedo case, supra, at 18, para. 72 (23 Oct. 1990); see also Guincho case, 81 Series A 15, para. 34 (10 July 1984).

143/ Eckle case, supra, at 36.

144/ Vernillo case, 198 Series A (20 Feb. 1991).

145/ Id. at para. 38.

146/ Buchholz case, supra.

147/ Milasi case, supra.

148/ Zimmermann and Steiner case, 66 Series A 12-13, para. 29 (13 July 1983).

149/ Neubeck v. Federal Republic of Germany, supra, at 32-33.

150/ Marijnissen v. the Netherlands, 40 Dec. and Rep. 83, 93 (12 Mar. 1984).

151/ Guincho case, 81 Series A 16, para. 38 (10 July 1984).

152/ Id.; see also Milasi case, supra.

153/ Guincho case, supra, at 17, para. 41.

154/ Foti case, 56 Series A (10 Dec. 1982).

155/ Effective remedial action by a Government may lead to a different result. See Zimmermann and Steiner case, supra.

156/ Buchholz case, supra.

157/ Eckle case, supra.

158/ The length of time to be examined amounted to 17 years in the proceedings instigated in Trier, and 10 years in the proceedings in Cologne.

159/ Id. at 37, para. 84.

160/ Id. at 38, para. 85.

161/ Zimmermann and Steiner case, supra.

162/ Id. at 12, para. 29.

163/ Id. at 13, para. 31.

164/ Marijnissen, supra, at 93.

165/ Martins Moreira case, 143 Series A (26 Oct. 1988).

166/ Id. at 17, para. 46; see also Baraona case, 122 Series A 19, para. 4 (8 July 1987).

167/ Id. at 19, para. 54.

168/ Id. at 19, para. 54.

169/ Id. at 58, para. 20.

170/ Id. at 21, para. 60.

171/ Buchholz case, supra, at 16, para. 50.

172/ Bock case, supra.

173/ Id. at 22, para. 47.

174/ Id. at 22, para. 47.

175/ Id. at 23, para. 48.

176/ H. v. United Kingdom, 120 Series A 62-63 (8 July 1987).

177/ Ensslin, Baader and Raspe v. Federal Republic of Germany, 14 Dec. and Rep. 64 (8 July 1978).

178/ Campbell and Fell case, supra.

179/ The European Court and Commission have found that counsel is not necessary when an appellate court will be basing its decision on the trial record or when the appeal is merely on points of law.

180/ W. v. Switzerland, 33 Dec. and Rep. 21 (13 July 1983). The Swiss Government had appointed a lawyer for the defendant but the lawyer had not intervened during the investigation stage. The European Commission stated that the lawyer should have intervened, but found no violation because the defendant did not complain to the authorities.

181/ G. v. United Kingdom, 35 Dec. and Rep. 75 (13 Oct. 1983).

182/ M. v. United Kingdom, 36 Dec. and Rep. 155 (15 July 1983).

183/ Golder case, 18 Series A (21 Feb. 1975); Silver and others v. United Kingdom, 51 Series B (11 Oct. 1980).

184/ X. v. Federal Republic of Germany, 5 Y.B. 104 (6 Mar. 1962). The Commission did not give any facts regarding the German court's refusal to allow the defendant's chosen lawyer to represent him.

185/ Ensslin, Baader and Raspe v. Federal Republic of Germany, supra. German law limited the number of counsel who could appear in court on behalf of a single client. The Commission noted that an average of 10 lawyers represented the defendants during the trial.

186/ Id.

187/ X. v. United Kingdom, 15 Dec. and Rep. 242 (9 Oct. 1978). A British court refused to permit a lawyer representing his father to appear in court because the United Kingdom's Professional Conduct Committee of the Bar Senate had announced that such representation would be improper.

188/ Ensslin, Baader and Raspe v. Federal Republic of Germany, supra.

189/ Appl. No. 6298/73, 2 Strasbourg Digest of Case Law 831 (21 Mar. 1975) (unpublished).

190/ X. and Y. v. Federal Republic of Germany, 42 Coll. Dec. 139 (20 July 1972).

191/ Pakelli case, 64 Series A (25 Apr. 1983).

192/ X. v. Norway, 3 Dec. and Rep. 43 (30 May 1975).

193/ X. v. Austria, 11 Y.B. 322 (19 July 1968).

194/ Appl. No. 9164/80, 2 Strasbourg Digest of Case Law 816 (5 May 1981) (unpublished).

195/ X. v. Norway, 3 Dec. and Rep. 43 (30 May 1975).

196/ S. v. Switzerland, 220 Series A (28 Nov. 1991); X. v. Austria, 6 Y.B. 194 (19 June 1963).

197/ M. v. United Kingdom, 36 Dec. and Rep. 155 (15 July 1983).

198/ Kurup v. Denmark, 42 Dec. and Rep. 287 (10 July 1985).

199/ Appl. No. 9127/80, 2 Strasbourg Digest of Case Law 846 (6 Oct. 1981) (unpublished).

200/ Artico case, 37 Series A (13 May 1980).

201/ Artico case, 34 Series B (Op. Com. 8 Mar. 1979).

202/ Goddi case, supra.

203/ Kamasinski case, supra.

204/ Appl. No. 9127/80, 2 Strasbourg Digest of Case Law 846 (6 Oct. 1981) (unpublished).

205/ Artico case, 37 Series A (13 May 1980).

206/ Pakelli case, supra.

207/ Artico case, supra, 37 Series A.

208/ X. v. Federal Republic of Germany, 28 Dec. and Rep. 229 (6 May 1982).

209/ Artico case, supra, 37 Series A.

210/ Pakelli case, supra.

211/ Id. at 18, 39.

212/ Granger v. United Kingdom, 174 Series A (28 Mar. 1990).

213/ Appl. No. 3212/67, 2 Strasbourg Digest of Case Law 855 (1 Apr. 1968) (unpublished); Appl. No. 2591/65, 2 Strasbourg Digest of Case Law 855 (6 Feb. 1968) (unpublished).

214/ Brown v. United Kingdom, 42 Dec. and Rep. 269 (7 Mar. 1985).

215/ Appl. No. 3049/67, 2 Digest of Strasbourg Case Law 855 (15 July 1968) (unpublished); Appl. No. 2703/66, 2 Strasbourg Digest of Case Law 854 (3 April 1967) (unpublished); Appl. No. 7300/75, 2 Digest of Strasbourg Case Law (13 Dec. 1976) (unpublished).

216/ Appl. No. 3075/67, 11 Y.B. 466 (19 July 1968).

217/ X. v. Federal Republic of Germany, 6 Dec. and Rep. 114 (6 July 1976); X. v. Austria, 36 Coll. 79 (17 Dec. 1970); Appl. No. 646/59, 3 Y.B. 272 (June 1960).

218/ Appl. No. 6946/75, 6 Dec. and Rep. 114 (6 July 1976).

219/ Quaranta case, 205 Series A (24 May 1991).

220/ Id. para. 34.

221/ Bonzi v. Switzerland, 12 Dec. and Rep. 185 (12 July 1978).

222/ X. v. Austria, 22 Coll. Dec. 96 (11 Feb. 1967).

223/ Eckle case, supra; S. v. Switzerland, supra; X. v. Austria, 24 Coll Dec. 20 (1 June 1967).

224/ X. and Y. v. Austria, 15 Dec. and Rep. 160 (12 Oct. 1978).

225/ Id.

226/ Ofner v. Austria, supra.

227/ Id.

228/ See also Kamasinski case, supra.

229/ Huber v. Austria, 46 Coll. Dec. 99 (4 and 5 Oct. 1974);
X. v. Belgium, 9 Dec. and Rep. 169 (9 May 1977).

230/ X. v. Belgium, 9 Dec. and Rep. 169, 174 (9 May 1977).

231/ Huber v. Austria, 46 Coll. Dec. 99 (4 and 5 Oct. 1974). The Commission held that two weeks were sufficient preparation time for the defendant to prepare his plea of nullity.

232/ Id.

233/ Köplinger v. Austria, 12 Y.B. 438 (1 Oct. 1968).

234/ X. v. Belgium, 9 Dec. and Rep. 169, 174 (9 May 1977).

235/ X. v. Austria, 15 Dec. and Rep. 160 (12 Oct. 1978).

236/ Id. at 16.

237/ Dec. Adm. Com. Ap. 4965/71, 2 Digest of Strasbourg Case Law 787 (9 Feb. 1972) (unpublished).

238/ Ofner v. Austria, supra.

239/ X. v. Austria, 22 Dec. and Rep. 96 (11 Feb. 1967).

240/ The European Commission also noted that the defendant himself had three months to prepare for the trial.

241/ Failing to provide an attorney to the defendant violates both articles 6 (3) (b) and 6 (3) (c), which states that everyone charged with a criminal offence has the right "to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require". Campbell and Fell case, supra.

242/ Ross v. United Kingdom, 50 Dec. and Rep. 179, 183 (11 Dec. 1986).

243/ Campbell and Fell, supra.

244/ Id.

245/ Kröcher and Möller v. Switzerland, 26 Dec. and Rep. 24, 52-53 (9 July 1981).

246/ Id.

247/ Id.

248/ Bonzi v. Switzerland, supra.

249/ Id. at 190.

250/ Kurup v. Denmark, supra.

251/ Ross v. United Kingdom, supra.

252/ X. v. Austria, 9 Dec. and Rep. 50 (5 July 1977); Appl. No. 2435/65,
2 Digest of Strasbourg Case Law 805 (17 Dec. 1966) (unpublished).

253/ Jespers v. Belgium, 27 Dec. and Rep. 61 (14 Dec. 1981).

254/ Id.

255/ X. v. United Kingdom, 42 Coll. Dec. 99 (12 July 1972).

256/ Haase v. Federal Republic of Germany, 11 Dec. and Rep. 78
(12 July 1977).

257/ Isop v. Austria, 5 Y.B. 108 (8 Mar. 1962). Austrian law recognizes
the Slovene and Croat languages as official languages for certain districts in
Austria. The plaintiff in this case submitted his petition to a court that
was not in one of these districts.

258/ X. and Y. v. Belgium, 9 Y.B. 418, 20 Coll. Dec. 8 (7 Oct. 1966).

259/ Kamasinski case, supra.

260/ Delcourt v. Belgium, 10 Y.B. 282 (6 April 1967).

261/ Kamasinski case, supra.

262/ Luedicke, Belkacem and Koc case, 29 Series A (28 Nov. 1978).

263/ Kamasinski case, supra.

264/ X. v. Austria, 2 Dec. and Rep. 68 (29 May 1975).

265/ Id.

266/ Oztürk case, supra.

267/ Luedicke, Belkacem and Koc case, supra.

268/ 23 Inhabitants of Alsemberg and Beersel v. Belgium, 6 Y.B. 332
(26 July 1963). The French-speaking applicants complained that the local
Flemish-language schools refused to provide an education in French to the
French-speaking students.

269/ Le Compte, Van Leuven and De Meyere case, 43 Series A 24, para. 55
(23 June 1981) [hereinafter Le Compte case]; see also Sramek case,
84 Series A 17, para. 36 (22 Oct. 1984).

270/ Sramek case, supra, at 17, para. 36.

271/ Zand v. Austria, 15 Dec. and Rep. 70, 81 (12 Oct. 1978).

272/ Le Compte case, supra, at 24, para. 57.

273/ Piersack case, 53 Series A 13, para. 27 (1 Oct. 1982); see also Belilos case, 132 Series A 29, para. 64.

274/ Delcourt case, 11 Series A (17 Jan. 1970).

275/ Borgers v. Belgium, 214-A Series A (30 Oct. 1991).

276/ Lithgow case, supra.

277/ Id. at 71.

278/ Ettl. v. Austria case, 117 Series A (3 Apr. 1987).

279/ In the Sramek case, however, the local government was party in the dispute.

280/ Additional factors in the European Court's decision were the length of the terms of office for the members (five years) and their virtual irremovability during that period.

281/ Sramek case, supra, at 18, para. 37.

282/ Id. at 42, para. 20.

283/ Zand v. Austria, supra, at 81-82; Le Compte case, 38 Series B 40; Engel case, supra, at 27-28.

284/ Zand v. Austria, supra.

285/ Id.

286/ Sutter v. Switzerland, 16 Dec. and Rep. 166 (1 May 1979).

287/ Campbell and Fell case, supra.

288/ The European Court also took other factors into consideration when reaching its decision, such as manner of appointment of members.

289/ In Zand v. Austria, supra, at 82, para. 80, the European Commission stated that although the Austrian minister could abolish the labour courts at his discretion, the irremovability of judges was guaranteed by the Austrian Constitution. The applicant had not succeeded in showing that the Government had violated that policy.

290/ Sutter case, supra.

291/ X. v. Sweden, 43 Coll. Dec. 71 (8 Feb. 1973).

292/ Id. at 79, para. 3.

293/ Belilos case, 132 Series A (29 Apr. 1988).

294/ Id. at 30, para. 67.

295/ Delcourt case, supra.

296/ Hauschildt case, 154 Series A, at 21, para. 48 (24 May 1989).

297/ Piersack case, supra, at 14, para. 30.

298/ Sramek case, supra, at 19-20; De Cubber case, 86 Series A 13-16 (26 Oct. 1984); Campbell and Fell case, supra, at 39-40.

299/ Hauschildt case, supra.

300/ Piersack case, supra.

301/ Id. at 14, para. 30.

302/ Id. at 15, para. 30.

303/ Id. at 15, para. 31.

304/ De Cubber case, supra, at 15, para. 29.

305/ As an investigatory judge in the case, the trial judge would have acquired detailed knowledge of the case, which might have influenced him or her.

306/ Id. at 16, para. 30.

307/ Ben Yaacoub case, 127 Series A (27 Nov. 1987). (The case was settled in the European Court.)

308/ Id. at 14, para. 109.

309/ Hauschildt case, supra, at 22, para. 50.

310/ Gillow case, 109 Series A (24 Nov. 1986).

311/ Ben Yaacoub case, supra, at 11, para. 96.

312/ De Cubber case, supra; Le Compte case, supra, at 25; Albert and Le Compte case, supra, at 17-18; Campbell and Fell case, supra, at 41.

313/ Le Compte case, supra.

- 314/ Le Compte case, supra, at 25, para. 58.
- 315/ Ringeisen case, supra, at 13, para. 97.
- 316/ Piersack case, supra, at 14-15, para. 30.
- 317/ Sramek case, supra, at 17, para. 36.
- 318/ Zand v. Austria, supra, at 79.
- 319/ Zand v. Austria, supra.
- 320/ X. and Y. v. Ireland, 22 Dec. and Rep. 51, 72-73 (10 Oct. 1980).
- 321/ X. v. Federal Republic of Germany, 4 Y.B. 346 (19 Sept. 1961).
- 322/ X. v. Belgium, 4 Y.B. 378 (19 Dec. 1961).
- 323/ Hopfinger v. Austria, 3 Y.B. 370, (19 Dec. 1960).
- 324/ Bricmont case, 158 Series A 31, para. 89 (7 July 1989). The defence had not applied to have evidence heard by one witness, and another witness had died.
- 325/ X. v. Austria, 44 Coll. Dec. 126 (9 July 1973); X. v. United Kingdom, 43 Coll. Dec. 151 (6 Apr. 1973); X. v. Federal Republic of Germany, 37 Coll. Dec. 119 (1 Apr. 1970).
- 326/ Id. at 135.
- 327/ Engel case, supra.
- 328/ Ekbatani v. Sweden, 44 Dec. and Rep. 113 (5 July 1985); X. v. Federal Republic of Germany, 35 Coll. Dec. 132 (13 July 1970).
- 329/ X. v. Federal Republic of Germany, 35 Coll. Dec. 127 (21 July 1970).
- 330/ X. v. Federal Republic of Germany, 35 Coll. Dec. 4 (21 July 1970).
- 331/ X. v. Federal Republic of Germany, 35 Coll. Dec. 132 (13 July 1970).
- 332/ X. v. Austria, 45 Coll. Dec. 59 (31 May 1973).
- 333/ X. v. Austria, 8 Y.B. 174 (15 Feb. 1965).
- 334/ X. v. Austria, 11 Coll. Dec. (23 July 1963).
- 335/ X. and Germany Association of Z. v. Federal Republic of Germany, 6 Y.B. 204 (16 Dec. 1963).

- 336/ X. v. United Kingdom, 43 Coll. Dec. 85 (14 Dec. 1972).
- 337/ X. v. Switzerland, 28 Dec. and Rep. 127 (11 Mar. 1982).
- 338/ X. v. Austria, 45 Coll. Dec. 59 (31 May 1973).
- 339/ X. v. Switzerland, 28 Dec. and Rep. 127, 136 (11 Mar. 1982).
- 340/ X. v. United Kingdom, 43 Coll. Dec. 85 (14 Dec. 1972).
- 341/ Bricmont case, supra; see also X. v. Denmark, 27 Dec. and Rep. (16 Dec. 1981).
- 342/ Bricmont case, supra.
- 343/ Kurup v. Denmark, supra; X. v. Denmark, 27 Dec. and Rep. (16 Dec. 1981).
- 344/ X. v. Federal Republic of Germany, 17 Dec. and Rep. 231 (4 July 1979).
- 345/ Schertenleib v. Switzerland, 17 Dec. and Rep. 180 (12 July 1979).
- 346/ X. v. Federal Republic of Germany, 1 Dec. and Rep. 84 (19 Dec. 1974).
- 347/ Asch case, 203 Series A (26 Apr. 1991).
- 348/ X. v. Austria, 40 Coll. 1 (1 June 1972).
- 349/ Kostovski case, 166 Series A (20 Nov. 1989); Windisch case, 186 Series A (27 Sept. 1990).
- 350/ Windisch case, supra, para. 30 (27 Sept. 1990).
- 351/ Kostovski case, supra, at 20, para. 41; see also Delta case, 191 Series A 15, para. 35 (19 Dec. 1990).
- 352/ Id.
- 353/ Id.
- 354/ Id. at 20, para. 42.
- 355/ Id. at 20, para. 43.
- 356/ Windisch case, supra.
- 357/ Id. at 10, para. 28.
- 358/ Id. at 11, para. 28.

359/ Asch case, supra.

360/ Id. at para. 31.

361/ S. v. Federal Republic of Germany, 39 Dec. and Rep. 43 (13 Dec. 1983).

362/ Isgrò case, 194-A Series A (19 Feb. 1991).

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366/ X. v. Federal Republic of Germany, 35 Coll. Dec. 121 (14 July 1970).

367/ Id.

368/ Bideault v. France, 43 Dec. and Rep. 232 (6 Oct. 1986).

369/ Bönisch case, 92 Series A (6 May 1985).

370/ Lutz case, 123 Series A (25 Aug. 1987); Minelli case, 62 Series A (25 Mar. 1983); Lingens and Leitgeb v. Austria, 26 Dec. and Rep. 171 (11 Dec. 1982).

371/ Minelli case, supra.

372/ Id.

373/ Engel case, supra, at 38, para. 90.

374/ X. v. Austria, 19 Coll. Dec. 95 (1 Apr. 1966).

375/ X. v. Austria, 23 Coll. Dec. 31 (3 Apr. 1967); X. v. Austria, 19 Coll. Dec. 95 (1 Apr. 1966); X. v. Denmark, 17 Coll. Dec. 44 (14 Dec. 1965).

376/ Krause v. Switzerland, 13 Dec. and Rep. 73 (3 Oct. 1978).

377/ In an early case the European Commission declared that the presumption of innocence is binding only on judges [Ensslin, Baader and Raspe v. Federal Republic of Germany, 14 Dec. and Rep. 64 (8 July 1978)] but that decision has since been overturned [Krause v. Switzerland, 13 Dec. and Rep. 73 (3 Oct. 1978)].

378/ X. v. Austria, 30 Dec. and Rep. 227 (6 Oct. 1982).

* Deleted for technical reasons.

- 379/ Ensslin, Baader and Raspe v. Federal Republic of Germany, supra.
- 380/ Krause v. Switzerland, supra.
- 381/ Id.
- 382/ R.F. and S.F. v. Austria, 44 Dec. and Rep. 238 (7 Oct. 1985).
- 383/ Bricmont v. Belgium, 48 Dec. and Rep. 106 (15 July 1986).
- 384/ Mr. and Mrs. X. v. United Kingdom, 45 Coll. Dec. 1, 12-13 (18 July 1973).
- 385/ X. v. the Netherlands, 16 Dec. and Rep. 184 (4 Dec. 1978).
- 386/ Novelli v. Italy, 45 Dec. and Rep. 263 (5 Dec. 1985);
Farragut v. France, 39 Dec. and Rep. 186 (6 July 1984).
- 387/ C. v. United Kingdom, 47 Dec. and Rep. 85 (12 May 1986).
- 388/ S. v. Federal Republic of Germany, 39 Dec. and Rep. 43 (13 Dec. 1983).
- 389/ Salabiaku case, 141 Series A 15, para. 28 (7 Oct. 1988).
- 390/ Id. at 16, para. 28.
- 391/ X. v. United Kingdom, 42 Coll. Dec. 135 (19 July 1972).
- 392/ Id.
- 393/ Salabiaku case, supra.
- 394/ Minelli case, supra, at 18, para. 37-38.
- 395/ Id.
- 396/ Id.
- 393/ bis I. and C. v. Switzerland, 48 Dec. and Rep. 35 (4 Dec. 1985).
- 394/ bis Id. at 45.
- 395/ bis Lutz case, supra, at 25, para. 59.
- 396/ bis Minelli case, supra, at 17, para. 34-35.
- 397/ Lutz case, supra.

398/ The Minelli case involved a defendant who was asked to pay part of the expenses of the prosecution, while in the Lutz case, the defendant was merely refused reimbursement of his own costs for defence. The European Court did not consider the difference significant.

399/ X. v. Austria, 36 Coll. Dec. 79 (17 Dec. 1970). Police had arrested the applicant for burglary and had seized the cash in his possession. The Commission found the application inadmissible.

400/ C. Family v. Switzerland, 35 Dec. and Rep. 98 (16 Dec. 1983).

401/ Engel case, supra, at 89, para. 37.

402/ Engel case, supra; X. v. Austria, 35 Coll. Dec. 109 (21 July 1970).

403/ Sutter case, supra, at 12, para. 26; Axen case, 72 Series A 24 (8 Dec. 1983).

404/ Sutter case, supra, at 12, para. 26; Axen case, supra.

405/ Appl. No. 8512/79, 2 Digest of Strasbourg Case Law 426, 444 (2 Oct. 1979).

406/ Axen case, supra, at 12, para. 26.

407/ Le Compte case, supra; Albert and Le Compte case, supra, at 18.

408/ Campbell and Fell case, supra.

409/ Id. at 42, para. 87.

410/ Id. at 42, para. 88.

411/ Le Compte case, supra.

412/ Le Compte case, supra, at 25, para. 59.

413/ 1913/63 v. Austria, 2 Digest of Strasbourg Case Law 438 (30 Apr. 1965) (unpublished).

414/ X. v. Norway, 35 Coll. Dec. 37, 50 (16 July 1970).

415/ Axen case, 57 Series B 24-25.

416/ Adler v. Switzerland, 32 Dec. and Rep. 228 (3 Mar. 1983).

417/ Albert and Le Compte case, supra.

418/ Axen case, supra.

- 419/ Albert and Le Compte case, supra.
- 420/ Axen case, supra, at 12-13; Sutter case, supra, at 13.
- 421/ Id.
- 422/ Sutter case, supra, at 13, para. 30
- 423/ Axen case, supra.
- 424/ Axen case, supra, at 12, para. 28
- 425/ Ekbatani case, supra, at 14, para. 31
- 426/ Strupport v. Federal Republic of Germany, 27 Coll. Dec. 61 (16 July 1992)
- 427/ X. v. United Kingdom, 36 Coll. Dec. 61 (13 July 1970)
- 428/ H. v. Belgium, 127 Series A 36, para. 54 (30 Nov. 1987)
- 429/ Albert and Le Compte case, supra.
- 430/ Le Compte case, supra, at 25-26.
- 431/ Håkansson and Stureson case, 171 Series A (21 Feb. 1990)
- 432/ Id.
- 433/ Id. at 20, para. 67
- 434/ Adler v. Switzerland, supra; see also H. v. Belgium 127 Series A (30 Nov. 1987).
- 435/ Id.
- 436/ Nielsen case, 4 Y.B. 490, 548 (15 Mar. 1961)
- 437/ Artico case, supra, 37 Series A.
- 438/ Delcourt v. Belgium, 11 Series A (17 January 1970): "[T]he right to a fair administration of justice holds such a prominent place in a democratic society that a restrictive interpretation of article 6 (1) would not correspond to the aim and purpose of that provision."
- 439/ Nielsen case, supra, at 548.
- 440/ Can v. Austria, 79 Series B 23-24, para. 48 (12 July 1984).
- 441/ Nielsen case, supra, at 548.
- 442/ Pakelli case, supra.

443/ X. v. United Kingdom, 9 Dec. and Rep. 100 (16 May 1977).

444/ Decision of the Committee of Ministers, Resolution relating to cases of Ofner and Hopfinger (5 Apr. 1963), 6. Y.B. 708, 710.

445/ Bönisch case, supra, at 15-16, para. 32-5.

446/ Id. at 16, para. 35.

447/ Albert and Le Compte case, supra.

448/ Branstetter case, 211 Series A (28 Aug. 1991).

449/ Id. at para. 41.

450/ The European Court noted that article 6 (3) (d) literally relates to witnesses and not experts, and it further held that the expert could not be regarded as a witness for the prosecution.

451/ Id. at para. 44.

452/ Barberà, Messeguè and Jabardo case, 146 Series A (6 Dec. 1988).

453/ Id. at 31, para. 70.

454/ Id. at 33, para. 78.

455/ Id. at 36-37, para. 87.

456/ X. v. Sweden, 2. Y.B. 354, 372-274 (30 June 1959).

457/ Colozza case, 89 Series A 14, para. 27 (12 Feb. 1985); see also Rubinat case, 89 Series A (12 Feb. 1985).

458/ Article 6 (3) (c), (d), and (e): the right to defend oneself in person or through counsel; the right to examine witnesses; the right to an interpreter.

459/ Monnell and Morris case, 115 Series A 22, para. 58 (2 Mar. 1987).

460/ Monnell and Morris case, supra, at 23, para. 60; and at 41, para. 152 (Opinion of the Commission).

461/ Id. at 23, para. 62.

462/ Id. at 25, para. 68.

463/ Colozza case, supra, at 15, para. 29.

464/ Id. at 16, para. 30

465/ Brozicek case, 167 Series A (19 Dec. 1989).

466/ F.C.B. v. Italy, 208-B Series A (28 Aug. 1991).

467/ Id. at para. 33.

468/ Id. at para. 35.

469/ Colozza case, supra, at 14, paras. 27-28; Brozicek case, supra, at 19, para. 45.

470/ Colozza case, supra, at 14, para. 28; Neumeister case, 17 Series A 16, para. 36 (7 May 1974).

471/ X. v. Sweden, 2. Y.B. 354, 370 (30 June 1959).

472/ Ofner v. Austria, 3. Y.B. 322, 332 (19 Dec. 1960).

473/ Feldbrugge case, 99 Series A (29 May 1986).

474/ Id. at 17, para. 44.

475/ Id. at 18, paras. 45-46.

476/ Schenk case, 140 Series A 29, para. 46 (12 July 1988); see also Delta case, supra, at 15, para. 36 (19 Dec. 1990).

477/ Barberà, Messegue and Jabardo case, supra, at 31, para. 68.

478/ Delta case, supra.

479/ Id. at 16, para. 36.

480/ Id.

481/ Schenk case, supra.

482/ Schenk case, supra, at 30, para. 49.

483/ Id. at 33.

484/ Bricmont case, supra.

485/ Id. at 28, para. 76.

486/ Id. at 29, para. 77.

487/ Id. at 30, para. 81.

488/ Olsson case, 130 Series A (24 Mar. 1988).

489/ Delcourt case, supra, at 14-15, para. 25; see also Ekbatani case, supra, at 12, para. 24.

490/ Delcourt case, supra, at 15, para. 26; see also Monnell and Morris case, supra, at 22, para. 56; Pakelli case, supra, at 14, para. 29.

491/ Monnell and Morris case, supra, at 22, para. 56; Ekbatani case, supra, at 13, para. 27.

492/ Ekbatani case, supra, at 13, para. 28.

493/ Id. at 14, para. 30.

494/ Pretto case, 71 Series A 11, para. 21 (8 Dec. 1983).

495/ Id. at 11, para. 22.

496/ Id.

497/ Axen case, 72 Series A 13 (8 Dec. 1983).

498/ Sutter case, supra, at 14.

499/ Campbell and Fell case, supra, at 43, para. 92.

500/ See Case 7505, Inter-Am. C.H.R., 51, 51-55, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1986) (resolving that a fair trial was held); Case 9190, Inter-Am. C.H.R., 55, 55-57, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1986); Case 9054, Inter-Am. C.H.R., 111, 111-13, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (1985) (same); Case 7504, Resolution No. 37/83, Inter-Am. C.H.R., OEA/Ser.L/V/II.61, doc. 49 rev. 1 (1983) (same), Case 7604, Inter-Am. C.H.R., 54, 54-57, OEA/Ser.L/V/II.63, doc. 10 rev. 1 (1984) (same), Case 3553, Inter-Am. C.H.R., 99, 99-100, OEA/Ser.L/V/II.61, doc. 22 rev. 1 (1983) (same). The resolutions in these cases are similar to those in cases 3553, 3554, 7506, 7507, 7509 and 7514 which were decided the same year. Id. at 100; Case 3115, Inter-Am. C.H.R., '91 91-93, OEA/Ser.L/V/II.57, doc. 6 rev. 1 (1982) (same); but see case 9260, Inter-Am. C.H.R., 154, 154-162, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1988) (See para. 505 infra).

501/ American Declaration of the Rights and Duties of Man, adopted 2 May 1948 by the Ninth International Conference of American States, Bogota, Colombia, reprinted in Basic Documents Pertaining to the Inter-American System 17, OEA/Ser.L/V/II.71, doc. 6 rev. 1 (1987).

502/ American Convention on Human Rights, 22 Nov. 1969, O.A.S.T.S. No. 36, at 1, OEA/Ser.L/V/II.23, doc. rev. 6, 1, O.A.S.O.R. OEA/Ser.K/XVI/I.1, doc. 65 rev.1 corr. 2 (1970), reprinted in 9 I.L.M. 673 (1973).

503/ Inter-American Commission on Human Rights: Ten Years of Activities, 1971-1981, at 136-39 (1982).

504/ Id. at 140-41.

- 505/ Id. at 142-46.
- 506/ Id. at 167-69.
- 507/ Id. at 173-76.
- 508/ Id. at 177-81.
- 509/ Inter-Am. C.H.R., 87, 87-88, OEA/Ser.L/V/II.54, doc. 9 rev. 1 (1981).
- 510/ Inter-Am. C.H.R., 81, 81-83, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (1985).
- 511/ Inter-Am. C.H.R., 113, 113-19, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (1985).
- 512/ Inter-Am. C.H.R., 75, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1987).
- 513/ Case 7864, Inter-Am. C.H.R., 65, 72, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1987).
- 514/ See Status of Human Rights in El Salvador, Inter-Am. C.H.R., 141, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (1985).
- 515/ See Status of Human Rights in El Salvador, Inter-Am. C.H.R., 154, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1986).
- 516/ Report on the Situation of Human Rights in Paraguay, Inter-Am. C.H.R., 53, OEA/Ser.L/V/II.43, doc. 13 (1978) [hereinafter Paraguay Report 1978].
- 517/ Report on the Situation of Human Rights in Panama, Inter-Am. C.H.R., 58, OEA/Ser.L/V/II.44, doc. 38 rev. 1 (1978) [hereinafter Panama Report 1978].
- 518/ Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, Inter-Am. C.H.R., 100-01, OEA/Ser.L/V/II.62, doc. 10 rev. 3 (1983) [hereinafter Report on Miskito Population 1983].
- 519/ Panama Report 1978 at 58, 62.
- 520/ Second Report on the Human Rights Situation in Suriname, Inter-Am. C.H.R., 23-24 OEA/Ser.L/V/II.66, doc. 21 rev. 1 (1985) [hereinafter Suriname Report 1985].
- 521/ Panama Report 1978 at 53.
- 522/ AG/RES/613 (XII-0/82), Inter-Am. C.H.R., 148, OEA/Ser.L/V/II.61, doc. 22 rev. 1 (1983).
- 523/ See Report on Miskito Population 1983 at 109.

524/ See Status of Human Rights in Guatemala, Inter-Am. C.H.R., 179-80, OEA/Ser.P/AG/doc.2518/89 (1989).

525/ Paraguay Report 1978 at 53.

526/ Report on the Situation of Human Rights in the Republic of Bolivia, 41 OEA/Ser.L/V/II.53, doc. 6 (1981) [hereinafter Bolivia Report 1981].

527/ Report on Miskito Population 1983 at 104.

528/ Id.

529/ Status of Human Rights in Paraguay, Inter-Am. C.H.R., 150 OEA/Ser.L/V/II.47 doc. 13 rev. 1 (1979).

530/ Status of Human Rights in Uruguay, Inter-Am. C.H.R., 123 OEA/Ser.L/V/II.57 doc. 6 rev. 1 (1982).

531/ Status of Human Rights in Argentina, Inter-Am. C.H.R., 107 OEA/Ser.L/V/II.57 doc. 6 rev. 1 (1982).

532/ Report on the Situation of Human Rights in Nicaragua, Inter-Am. C.H.R., 62 OEA/Ser.L/V/II.45, doc. 16 rev. 1 (1978) [hereinafter Nicaragua Report 1978].

533/ See Status of Human Rights in Guatemala, Inter-Am. C.H.R., 180, OEA/Ser.P/AG/doc.2518/89 (1989).

534/ See Status of Human Rights in Paraguay, Inter-Am. C.H.R., 180, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1986).

535/ See infra notes 646, 705-15 and accompanying text.

536/ *

537/ Report on Miskito Population 1983 at 100.

538/ Paraguay Report 1978 at 68.

539/ See Status of Human Rights in Nicaragua, Inter-Am. C.H.R., 194, OEA/Ser.P/AG/doc.2518/89 (1989).

540/ See Status of Human Rights in El Salvador, Inter-Am. C.H.R., 154, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1986).

541/ Bolivia Report 1981 at 41-42.

* Deleted for technical reasons.

542/ Report on the Situation of Human Rights in Haiti, Inter-Am. C.H.R., 48-49, OEA/Ser.L/V/II.77, doc. 18 rev. 1 (1990) [hereinafter Haiti Report 1990].

543/ Suriname Report 1985 at 32.

544/ Bolivia Report 1981 at 44.

545/ Suriname Report 1985 at 33.

546/ Case 9102, Inter-Am. C.H.R., 57, 96-97, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1986).

547/ Velásquez Rodríguez case, Judgement of 29 July, 1988, Inter-Am. C.H.R., 68, OEA/Ser.L/V/III.19, doc. 13 (1988).

548/ Report on the Situation of Human Rights in Panama, Inter-Am. C.H.R., 34-35 OEA/Ser.L/V/II.76, doc. 16 rev. 2 (1989) [hereinafter Panama Report 1989].

549/ Report on the Situation of Human Rights in Uruguay, Inter-Am. C.H.R., 53 OEA/Ser.L/V/II.43 doc. 19 rev. 1 (1978) [hereinafter Uruguay Report 1978].

550/ Suriname Report 1985 at 22.

551/ See Status of Human Rights in Panama, Inter-Am. C.H.R., 486, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1991).

552/ Suriname Report 1985 at 38.

553/ Report on Miskito Population 1983 at 103.

554/ Activities Connected with Special Tribunals in Nicaragua, Inter-Am. C.H.R., 230, OEA/Ser.P/AG/doc.2518/89 (1989).

555/ Id.

556/ Panama Report 1978 at 58.

557/ Nicaragua Report 1978 at 62.

558/ Paraguay Report 1978 at 55.

559/ See Status of Human Rights in Panama, Inter-Am. C.H.R., 485, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1991).

560/ Case 3482, Inter-Am. C.H.R., 23, 25, OEA/Ser.L/V/II.54, doc. 9 rev. 1 (1981).

561/ Status of Human Rights in Haiti, Inter-Am. C.H.R., 118 OEA/Ser.L/V/II.57 doc. 6 rev. 1 (1982).

562/ See Status of Human Rights in Paraguay, Inter-Am. C.H.R., 170, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1990).

563/ Situation of Human Rights in Cuba: Seventh Report, Inter-Am. C.H.R., 56, OEA/Ser.L/V/II.61, doc. 29 rev. 1 (1983) [hereinafter Cuba Report 1983]

564/ See e.g., cases cited at note 500, supra.

565/ Cuba Report 1983 at 56. See also Report on the Situation of Human Rights in the Republic of Guatemala, Inter-Am. C.H.R., 67 OEA/Ser.L/V/II.61 doc. 47 rev. 1 (1983) [hereinafter Guatemala Report 1983]; Paraguay Report 1978 at 70, 73; Report on the Situation of Human Rights in Suriname, Inter-Am. C.H.R., 36, OEA/Ser.L/II.61, doc. 6 rev. 1 (1983); Uruguay Report 1978 at 61.

566/ Paraguay Report 1978 at 71.

567/ Suriname Report 1983 at 36.

568/ Paraguay Report 1978 at 72.

569/ Report on the Situation of Human Rights in Argentina, Inter-Am. C.H.R., 223, OEA/Ser.L/V/II.49, doc.19 rev. 1 (1980) [hereinafter Argentina Report 1980].

570/ Guatemala Report 1983 at 91.

571/ Haiti Report 1990 at 49.

572/ Paraguay Report 1978 at 70.

573/ Cuba Report 1983 at 57.

574/ Case 10.198, Inter-Am. C.H.R., 73, 79, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1990).

575/ Cuba Report 1983 at 56.

576/ Uruguay Report 1978 at 57.

577/ See supra note 546 and accompanying text; see also supra note 566 accompanying text.

578/ See infra footnote 644 and accompanying text.

579/ Case 10.037, Inter-Am. C.H.R., 36, OEA/Ser.P/AG/doc.2518/89 (1989).

580/ Id. at 62 (citing Neumeister case, 7 Series A 41 (27 June 1968) at 83).

581/ Id. at 65.

582/ Report on the Situation of Human Rights in the Republic of Nicaragua, Inter-Am. C.H.R., 105, OEA/Ser.L/V/II.53, doc.25 (1981) [hereinafter Nicaragua Report 1981].

583/ Panama Report 1978 at 59.

584/ See Status of Human Rights in Chile, Inter-Am. C.H.R., 287, OEA/Ser.L/V/II.74, doc. 10 rev. 1 (1988).

585/ Case 10.180, Inter-Am. C.H.R., 237, 240, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1991).

586/ Id. at 250.

587/ Report on Miskito Population 1983 at 103, 105.

588/ Case 8095, Inter-Am. C.H.R., 34, 37, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (1985).

589/ Second Report on the Situation of Political Prisoners and Their Relatives in Cuba, Inter-Am. C.H.R., 7, OEA/Ser.L/V/II.23, doc. 6 rev. 1 (1970) [hereinafter Cuba Report 1970].

590/ Case 10.198, Inter-Am. C.H.R., 73, 79, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1990).

591/ Id. at 95.

592/ Paraguay Report 1978 at 70.

593/ Guatemala Report 1983 at 91.

594/ Suriname Report 1985 at 30.

595/ Guatemala Report 1983 at 92.

596/ Panama Report 1978 at 57.

597/ Id. at 58.

598/ Cuba Report 1983 at 57.

599/ Guatemala Report 1983 at 91.

600/ Case 4563, Inter-Am. C.H.R., 57, 61, OEA/Ser.L/V/II.63, doc. 10 rev. 1 (1984).

601/ Case 7378, Inter-Am. C.H.R., 60, 63, OEA/Ser.L/V/II.54, doc. 9 rev. 1 (1981).

602/ Nicaragua Report 1978 at 134.

603/ Uruguay Report 1978 at 52.

604/ See Inter-Am. C.H.R., 193, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1986).

605/ See Status of Human Rights in Paraguay, Inter-Am. C.H.R., 169, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1990).

606/ Id. at 170.

607/ See Status of Human Rights in Panama, Inter-Am. C.H.R., 495, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1991).

608/ See Argentina Report 1980 at 221; see also Guatemala Report 1983 at 88.

609/ Panama Report 1989 at 5.

610/ Panama Report 1978 at 72.

611/ See Inter-Am. C.H.R., 182, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (1985).

612/ Guatemala Report 1983 at 96.

613/ Nicaragua Report 1978 at 61.

614/ See Status of Human Rights in Paraguay, Inter-Am. C.H.R., 180, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1986).

615/ Paraguay Report 1978 at 72.

616/ Nicaragua Report 1978 at 61.

617/ Guatemala Report 1983 at 93.

618/ Paraguay Report 1978 at 72.

619/ Guatemala Report 1983 at 96.

620/ Nicaragua Report 1981 at 81.

621/ Id.

622/ Id. at 106.

623/ Panama Report 1978 at 59.

624/ Argentina Report 1980 at 224.

625/ Case 9755, Inter-Am. C.H.R., 132, 137, OEA/Ser.L/V/II.74, doc. 10
rev. 1 (1988).

626/ Guatemala Report 1983 at 91.

627/ Cuba Report 1983 at 57.

628/ Guatemala Report 1983 at 95.

629/ Cuba Report 1970 at 5.

630/ Case 9850, Inter-Am. C.H.R., 41, 75, OEA/Ser.L/V/II.79, doc. 12
rev. 1 (1991).

631/ Id. at 76.

632/ Id.

633/ Case 9260, Inter-Am. C.H.R., 154, 162, OEA/Ser.L/V/II.74, doc. 10
rev. 1 (1988).

634/ Nicaragua Report 1978 at 61.

635/ Suriname Report 1985 at 23.

636/ Suriname Report 1983 at 37.

637/ In the matter of Viviana Gallardo et al., Series B, No. G 101/81
(1986).

638/ Id. at 51.

639/ Godinez Cruz case, Preliminary Objections, Inter-Am. C.H.R., 81, 100
OEA/Ser.L/V/III.17 doc. 13, para. 93 (1987).

640/ Godinez Cruz case, Judgement of 20 January 1989, Inter-Am. C.H.R.,
14, 100 OAS/Ser.L/V/III.21, doc. 14 (1989)

641/ Id. at 109.

642/ Id.

643/ Id. at 128.

644/ Advisory Opinion of 9 May 1986, Inter-Am. C.H.R., 13 OEA/Ser.L/III.15, doc. 13 (1986).

645/ Id. at 30.

646/ Advisory Opinion of 6 October 1987, Inter-Am. C.H.R. OEA/Ser.L/V/III.19, doc. 13 (1988).

647/ Id. at 19.

648/ Id. at 23.

649/ Id.

650/ Inter-Am. C.H.R., 115 OEA/Ser.L/V/II.54, doc. 9, rev. 1 (1981).

651/ See Status of Human Rights in Chile, Inter-Am. C.H.R., 202, OEA/Ser.L/V/II.71, doc. 9, rev. 1 (1987).

652/ Advisory Opinion OC-8/87, supra, at 34.

653/ Id.

654/ Article XVIII of the American Declaration of the Rights and Duties of Man provides: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

655/ Article 8 of the Universal Declaration of Human Rights provides: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

656/ Article 2(3) of the International Covenant on Civil and Political Rights provides:

"Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted."

657/ The provision for amparo in the American Convention provides through article 25:

"Right to Judicial Protection

1. Everyone has the right to a simple and prompt recourse, or any other effective recourse, before a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

(a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;

(b) to develop the possibilities of judicial remedy; and

(c) to ensure that the competent authorities shall enforce such remedies when granted."

658/ Hector Fix Zamudio, The Writ of Amparo in Latin America, 13 Lawyer of the Americas 361-66 (1981). Three traditional bases or interpretations of the term amparo exist. First, the term was used as a synonym for "remedy" or means of challenging (recurso o medio de impugnación) judicial decisions. It first appeared in the Siete Partidas, a compilation ordered by Alfonso the Wise (1221-84), and greatly influenced law in the Spanish-American colonies. Second, the term "amparo" was utilized to designate a kind of injunction (interdictos posesorios), which in the majority of cases, according to Spanish law, would lie to protect real property rights. On occasion amparo was employed to safeguard personal rights as well. The term "interdict amparo" still remains to specify the instrument for maintaining possessory rights over urban or rural properties against dispossession efforts by other private interests. It has been codified in the civil procedure of Bolivia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Venezuela. Bolivia and Venezuela permit the remedy to be sought from law enforcement authorities as well as from the courts. The proceeding is known as the "administrative amparo". The third meaning of the amparo relates to its role as a procedural instrument for securing the rights of the individual. Its central importance lies in its potential to enforce individual rights found in the national constitutions of Latin America. Id. at 364-66.

659/ Id.

660/ Id. at 366.

661/ Id.

662/ Id. at 367.

663/ Id.

664/ Sir Udo Udoma, Some Thoughts on World Habeas Corpus, in The Human Right to Individual Freedom: A Symposium on World Habeas Corpus 43 (1970).

665/ John Mandler, "Habeas Corpus and the Protection of Human Rights in Argentina", 16 Yale J. Int'l Law 1 (1991).

666/ Some constitutions provide explicitly for the right to petition for habeas corpus. See, e.g., Constitution of Bolivia, art. 18; Constitution of Costa Rica, art. 48; Constitution of the Dominican Republic, art. 8, sec. 2; Constitution of Ecuador, art. 19, sec. (17j); Constitution of El Salvador, art. 11; Constitution of Guatemala, art. 263; Constitution of India, art. 32(2); Constitution of Panama, art. 22; Constitution of Peru, art. 295; Constitution of the Philippines, art. 4, sec. 15; Constitution of Portugal, art. 31; Constitution of Spain, art. 17(4). Other constitutions provide rights to petition for redress similar to habeas corpus. See, e.g., Constitution of the Bahamas, art. 28 (Article 28 provides that a detained person may apply to the Supreme Court for redress. The court may then issue such writs as necessary for the purpose of enforcement of any provision regarding enumerated fundamental rights.); Constitution of Belize, art. 18 (same as Bahamas); Constitution of Chile, art. 21 (The detained person has the right to appeal to a magistrate; the magistrate may then order the individual to be brought before it.); Constitution of Cyprus, art. 11(7) (The detained person has a right to take proceedings by which the lawfulness of his/her detention shall be decided speedily by a court.); Constitution of Ireland, art. 40, sec. 4 (A person may complain that he is unlawfully detained and the High Court may order the person in whose custody such person is detained to produce the body of such a person before the High Court.); Constitution of Japan, art. 34 (Upon demand of any detained person, adequate cause for detention must be immediately shown in open court in his presence and the presence of counsel.); Constitution of Korea, art. 12, sec. 6 (Any person who is arrested or detained shall have the right to request the court to review the legality of the arrest or detention.).

667/ See, e.g., International Covenant on Civil and Political Rights, art. 9(4); American Convention on Human Rights, art. 7(6); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5(4).

668/ Habeas corpus protects the right to life, the right to be free from torture, and the right to be free from disappearances, among other rights. "[T]housands of forced disappearances could have been avoided in the recent past if the writ of habeas corpus had been effective The writ ... is also an effective means of preventing torture" Advisory Opinion OC-8/87, supra, para. 36.

669/ Id. The Special Rapporteur on states of emergency stated in his second annual report to the Sub-commission on Prevention of Discrimination and Protection of Minorities that "the most serious violations of the human rights of the detainees occur most frequently during states of emergency" United Nations doc. E/CN.4/Sub.2/1988/18/Rev.1, at 1 (1988).

670/ De Wilde, Ooms and Versyp cases, 12 Series A (19 June 1971) [hereinafter the Vagrancy Cases].

671/ Id. at 41, para. 76.

672/ Id.

673/ X. v. United Kingdom, 46 Series A (5 November 1981); Weeks v. United Kingdom, 114 Series A (2 March 1987); Schiesser case, 34 Series A (4 Dec. 1979).

674/ Engle case, supra.

675/ Hurst Hannum, Materials on International Human Rights and United States Criminal Law and Procedure 54 (1989).

676/ Voulanne v. Finland, Report of the Human Rights Committee. Official Records of the General Assembly, Forty-fourth session, Supplement No. 40. (A/44/40), annex.

677/ Id.

678/ Torres v. Finland, Report of the Human Rights Committee. Official Records of the General Assembly, Forty-fifth session, Supplement No. 40. (A/45/40), vol. II, annex IX K.

679/ Ireland v. United Kingdom, 25 Series A (19 Jan. 1978); see also 19 Y.B. 512, 580 (25 Jan. 1976).

680/ X. v. Austria, 1 Strasbourg Digest of Case Law 589 (17 Mar. 1981).

681/ European Convention, article 5(4).

682/ International Covenant on Civil and Political Rights, article 9(4); American Convention, article 7(6).

683/ X. v. Federal Republic of Germany, 38 Dec. and Rep. 130 (19 July 1971).

684/ Sanchez-Reisse case, 107 Series A (21 Oct. 1986).

685/ Zamir v. United Kingdom, Report by the European Commission (11 Oct. 1983).

686/ Luberti case, 75 Series A (23 Feb. 1984).

687/ Van Droogenbroeck case, 50 Series A (24 June 1982). The European Court has also extended the requirement of periodic review to indeterminate sentences for life. See, e.g., Weeks case, 114 Series A (2 Mar. 1987); Thynne, Wilson & Gunnell case, 114 Series A (25 Oct. 1990).

688/ Engel case, supra.

689/ Christinet v. Switzerland, 17 Dec. and Rep. 35 (1 March 1979).

690/ Neumeister v. Austria, 8 Series A (27 June 1968).

691/ Torres v. Finland, supra.

692/ Dec. Adm. Com. 1983/63 IX at 286.

693/ Vuolanne v. Finland, supra.

694/ Hannum, supra, at 40.

695/ Winterwerp case, 33 Series A 23, para. 56 (24 Oct. 1979).

696/ Id. at 24, paras. 60-61.

697/ X. v. Belgium, 3 Dec. and Rep. 139 (2 Oct. 1975).

698/ X. v. United Kingdom, 46 Series A (5 Nov. 1981).

699/ Id.

700/ B. v. United Kingdom, 32 Dec. and Rep. 5 (7 Oct. 1981).

701/ Engel case, supra.

702/ Id.

703/ Id.

704/ Vagrancy cases, supra.

705/ Hannum, supra, at 50 (1989); see Ireland v. United Kingdom, 25 Series A (18 Jan. 1978).

706/ Advisory Opinion OC-8/87, supra; Advisory Opinion OC-9/87, supra.

707/ Advisory Opinion OC-8/87, supra, para. 35.

708/ Id., para. 36.

709/ Id.

710/ Id., para. 24.

711/ Id., para. 20.

712/ Id.

713/ Working Paper presented by Mr. John Carey, United Nations doc. E/CN.4/Sub.2/1991/WG.1/WP.1 at 7 (1991). Anglo-American habeas corpus procedures, however, do require that the detainee be produced before a judge. Id. Also, article 7(5) of the American Convention provides that any person detained must be brought promptly before a judge or other officer.

714/ Advisory Opinion OC-9/87, supra, para. 41.

715/ Id. para. 20 quoting Advisory Opinion OC/87, supra.

716/ Fourth annual report on states of emergency, United Nations doc. E/CN.4/Sub.2/1991/28.

717/ Id. at 43-44.

718/ Id. at 47.

719/ Id. at 39.

720/ Id. at 39-40.

721/ Report of the Working Group on Enforced or Involuntary Disappearances, United Nations doc. E/CN.4/1990/13, para. 346 (1990).

722/ Caldas v. Uruguay, Report of the Human Rights Committee, Official Records of the General Assembly, Thirty-eighth session, Supplement No. 40 (A/38/40), annex XVIII.

723/ See, e.g., Santullo Valcada v. Uruguay, Comm. No. 9/1977, Report of the Human Rights Committee, Official Records of the General Assembly, Thirty-fifth session, Supplement No. 40 (A/35/40), annex V; Garcia Lanza de Netto et al. v. Uruguay, Comm. No. 8/1977, id., annex VI; Grille Motte v. Uruguay, Comm. No. 11/1977, id., annex X.

724/ Advisory Opinion OC-9/87 of 6 Oct. 1987, para. 24.

725/ International Commission of Jurists, States of Emergency: Their Impact on Human Rights (1983).

726/ Joint Intervention by the International Commission of Jurists and the Federation Internationale des Droits de l'Homme, "Habeas Corpus as a Non-derogable Right", United Nations Sub-commission on Prevention and Discrimination and Protection of Minorities, forty-third session (Aug. 1991).

727/ United Nations doc. E/CN.4/1984/4 (1984).

728/ Velásquez Rodríguez case, Judgement of 29 July 1988, 115 Series C. No. 4.

729/ Id. at 114.

730/ Human Rights Committee, Decision with Regard to Communication of Valentini de Bazzano, 19 ILM 133, 138.
